

KAUA'I PLANNING COMMISSION
REGULAR MEETING
August 11, 2015

The regular meeting of the Planning Commission of the County of Kaua'i was called to order by Chair Anderson at 9:10 a.m., at the Lihu'e Civic Center, Mo'ikeha Building, in meeting room 2A-2B. The following Commissioners were present:

Chair Angela Anderson
Vice Chair Sean Mahoney
Mr. Louis Abrams
Ms. Amy Mendonca
Mr. Wayne Katayama
Mr. Kimo Keawe

The following staff members were present: Planning Department – Michael Dahilig, Leslie Takasaki, Dale Cua, Jody Galinato, Marisa Valenciano; Deputy County Attorney Jodi Higuchi-Sayegusa, Office of Boards and Commissions – Administrator Jay Furfaro, Commission Support Clerk Darcie Agaran

Discussion of the meeting, in effect, ensued:

CALL TO ORDER

Chair Anderson called the meeting to order at 9:10 a.m.

ROLL CALL

Planning Director Dahilig: Madam Chair, you have six (6) members present and a quorum.

Chair Anderson: Thank you.

APPROVAL OF THE AGENDA

Mr. Dahilig: Madam Chair, your next item for business is Item C, Approval of the Agenda. The Department would recommend taking the agenda items as is, which would mean the first action items would be General Business Matters this morning, after the Consent Calendar.

Chair Anderson: Do I have a motion to approve the agenda?

Mr. Mahoney: Move to approve.

Ms. Mendonca: Second.

Chair Anderson: Any discussion? (None) All those in favor? (Unanimous voice vote) Any opposed? (None) Motion carries 6:0.

MINUTES of the meeting(s) of the Planning Commission

Mr. Dahilig: Thank you, Madam Chair. We are now on Item D, Minutes of the Meeting of the Planning Commission. We have no minutes this morning for approval.

RECEIPT OF ITEMS FOR THE RECORD

Mr. Dahilig: We are now on Item E, Receipt of Items for the Record. Madam Chair, we passed out a number of written testimonies attached to the paper agenda for you this morning. Would you like me to read this out for the record?

Chair Anderson: Please.

Mr. Dahilig: Okay. Madam Chair, we have a letter of support from Captain Bruce Hay from PMRF; this is an email that was circulated. I believe this is in relation to the Murray homestay. For General Business Matters, under Item I.1., there is a testimony on 08/10/15 from Bennette Misalucha, the Executive Director of Hawai'i Crop Improvement Association, in support of the request for reconsideration. Testimony on 08/10/15 from Councilmember Gary Hooser in opposition of the reconsideration request. We also have testimony under F.2.a. on the Giuseppe Gereke-King application. Testimony from Bette Uyeda in opposition, Ernest E. Coyaso in opposition, Malia Alberin in opposition, Mitch and Sharon Milan in support, and Nathan and Robert Smith in support. As well as a number of other written submittals that have come in that are attached to the written agenda that was circulated to the Commission this morning.

Chair Anderson: Do I have a motion to receive the items for the record?

Ms. Mendonca: So moved.

Mr. Mahoney: Second.

Chair Anderson: Any discussion? (None) All those in favor? (Unanimous voice vote) Any opposed? (None) Okay, motion carries 6:0.

HEARINGS AND PUBLIC COMMENT

Continued Agency Hearing (NONE)

Mr. Dahilig: Thank you, Madam Chair. We are now on Item F, Hearings and Public Comment. Under Item F.1., we have no Continued Agency Hearings for this morning.

New Agency Hearing

Class IV Zoning Permit Z-IV-2015-37, Use Permit U-2015-36 and Special Permit SP-2015-14 to allow conversion of an existing residence into a homestay operation on a parcel located along the eastern side of Menehune Road in Waimea Valley, further identified as 5390 Menehune Road and Tax Map Key 1-5-002:047, and containing a total area of 37,407 sq. ft. = Giuseppe Gereke-King.

Mr. Dahilig: Item F.2., New Agency Hearing. Class IV Zoning Permit Z-IV-2015-37, Use Permit U-2015-36, and Special Permit SP-2015-14. This is to allow conversion of an existing residence into a homestay operation on a parcel located along the eastern side of Menehune Road in Waimea Valley, further identified as 5390 Menehune Road at Tax Map Key 1-5-002 parcel 47, and containing a total area of 37,407 square feet. The applicant is Giuseppe Gereke-King.

Madam Chair, the Department would recommend opening the Agency Hearing at this time as we have two (2) individuals signed up to testify.

Ernest Coyaso followed by Giuseppe King. Ernest Coyaso.

Ernest Coyaso: Good morning. My name is Ernest Coyaso. I own land in Waimea Valley, and I am very strongly against the proposal. It worries me a little bit. What research I got off the internet is a little bit scary. I understand the person has good intentions. I just feel that it's in the wrong location. I was planning to retire there in the future onto that property. My father had bought that property; he has passed away.

Chair Anderson: If you can pause your testimony, there seems to be a technical issue. Just one moment.

We'll go ahead and take a five (5) minute break until we can resolve this matter.

The Commission recessed this portion of the meeting at 9:16 a.m.

The Commission reconvened this portion of the meeting at 9:20 a.m.

Chair Anderson: I'll call this meeting back to order.

We'll start your three (3) minute testimony over, so you can begin again. Thank you.

Mr. Coyaso: Good morning. My name is Ernest Coyaso. I'm here in protest of the said request for commercial license. I'm not sure what's applied for or what the person wants to do with the property; I can only go off of what I've researched on the internet. I do believe they have good intentions, but like I said before, my father bought this property. It's a nice, secluded piece of property up in Waimea Valley. I was hoping to retire there. I do have concerns about strangers coming in and out. I can understand wanting to treat Veterans; I am a Veteran myself. My

father and many uncles are all Veterans, and I understand they need help, but I would like to think that there would be a better place to do it than in a residential area. Having strangers going in and out of that area is a little concerning for me. I not only emailed you, but to show how opposed I am to it, I flew here from O'ahu to catch this meeting, to let you guys know how strongly I oppose this, and ask that you not grant this; to leave the land as residential, so that should I retire and be able to come back, I can live in quiet. That's about all I have to say. Are there any questions for me?

Chair Anderson: No questions. Thank you.

Mr. Coyaso: Thank you.

Mr. Dahilig: Giuseppe King followed by Bette Uyeda.

Giuseppe King: I am Giuseppe King. I am the applicant. I understand the concerns of Ernesto (sic) and Bette, although they are not on-island, so they don't have any familiarity with my operation that's been in operation for eight (8) years with no complaints. I'm not sure where he's relating my personal job in with my vacation rental, which has nothing to do with the VA and my project with the United States Veterans Administration; completely unrelated to my vacation rental, to my land, to everything all together.

There has been no complaints about me, and their property is so far remote from my property. In order to even get to the property, they have to hike all the way to the back of my property; swim across the river; if it's low enough, hike over another dune in the middle of the river; swim across the other part of the river; and then up the bank that's 20 feet tall in order to get to their property; to even be seen.

The concern that they should have, if they're concerned about living here, is the open use of drugs and prostitution that's right across the bridge where they have to trespass in order to get to their own property. None of that has anything to do with my property. My guests are fully vetted. I have...what do they call that? They're vetted. I know...people have already given...what's the word I'm looking for? I'm at a loss for words. They're not strangers is what I'm trying to say; they're not strangers. They come with...totally at a loss...other people's recommendation and other people's experience with these people. If anybody at any time calls and asks me with any kind of complaint, as far as "do I need to pay a cleaning fee?" or do they need to sign a document, I immediately discard those and don't even apply those to my vacation rental. I'm very, very particular about the guests that I bring into my home. This is my home that I live alone in. I'm not just bringing anybody into my home. My alternative is bringing in six (6) security containers or shipping containers instead of doing bed and breakfast.

I live in flood land. There's no possible way of farming my land for any legitimate, profitable farming; although I've managed to do so in a very unique way. I mentioned flood lands; I'm not talking an inch of water, two (2) inches of water, I'm talking 6 feet of water that comes by and has destroyed my farm on more than one (1) occasion. I've lost hundreds of thousands of dollars, or tens of thousands of dollars I should say, in flood damage, so to expect that my flood

plain can be adequately farmed for enough profit is an unreasonable expectation. Although I am...

Mr. Dahilig: Three (3) minutes, Madam Chair.

Chair Anderson: Okay. So Ms. Gereke (sic), this is the public testimony portion, so each person has three (3) minutes. You'll have another time when we take action to describe your particular application.

Ms. King: Oh, okay. So I'm just saying that I appreciate their testimony and I understand that their fears of what potentially could be, but it hasn't happened.

Chair Anderson: Okay, thank you.

Ms. King: Thank you.

Chair Anderson: Is there anyone else in the public that would like to give testimony at this time on this agenda item?

Mr. Dahilig: I have Bette Uyeda.

Bette Uyeda: Hi, my name is Bette Uyeda. My ex-husband and I bought that property. He was a Vietnam Vet, Purple Heart, and Air Medal. At that time, they didn't have the description for PTSD. He could become very violent, so that's the reason why we had divorced. I went to O'ahu and he stayed behind on Kaua'i.

In the divorce, he threatened to burn down the geodesic dome house that we were building, so he said he wanted to sell it to his mom for the children. That's what we did; we sold it to his mom and dad, and now the children have inherited it because their grandparents have passed. That property is very pretty, very remote, very secluded.

I commend Ms. King for trying to help the Veterans, but I think it's more than a layperson's job. I'm concerned. I did the research on the web and she has a floatation tank which has two (2) floatation tanks; 1,200 pounds of Epson salt in each tank.

As she said, Waimea River is a flood zone. When she bought the property, she knew it was in a flood zone. We built our house 8 feet off the ground because on my son's property now, it floods 4 feet high, so we built the geodesic dome 8 feet high. Across the river I guess its 6 feet high. It was a fact before she bought it that it was in a flood zone. It's zoned for agriculture, so maybe she just has to time her crops between floods or whatever.

My concern is that when it does flood, what happens to that Epson salt? Is it going to go into Waimea River? What's the impact on the environment? This is residential and agricultural land, and I'm pro agriculture and residential. I'd like to keep Waimea Valley peaceful and quiet and family oriented.

Mr. Dahilig: Three (3) minutes, Madam Chair.

Ms. Uyeda: I have a copy of her website page, if I could pass it out. It was \$0.59 a page to copy it, so I have one (1) color and one (1) black and white; if I could pass it on to you.

Chair Anderson: Thank you. You can provide it to...

Ms. Uyeda: And it states on there about the Epson salt. I don't know what the backup plan is in case there is a flood. What happens to that salt?

Chair Anderson: Okay, thank you.

Ms. Uyeda: Thank you.

Mr. Dahilig: Madam Chair, that's all I have signed up to testify on this agenda item.

Chair Anderson: Is there anyone else in the public that would like to give testimony on this agenda item?

Mr. Dahilig: Madam Chair, given the testimony, the Department would recommend closing the Agency Hearing at this time.

Mr. Keawe: I move to close the hearing.

Mr. Mahoney: Second.

Chair Anderson: Discussion? (None) All those in favor? (Unanimous voice vote) Any opposed? (None) Motion carries 6:0.

Class IV Zoning Permit Z-IV-2015-39, Use Permit U-2015-38 to allow conversion of an existing residence into a homestay operation on a parcel located along the mauka side of Nohea Street within the Kakela Makai Subdivision in Kalāheo, situated approx. 450 ft. west of its intersection with Kakela Makai Drive and further identified as 1196 Nohea Street, Tax Map Key 2-3-023:119, and containing a total area of 10,017 sq. ft. = David & Melinda Murray.

Mr. Dahilig: Thank you, Madam Chair. We are now on Item F.2.b. This is Class IV Zoning Permit Z-IV-2015-39 and Use Permit U-2015-38 to allow conversion of an existing residence into a homestay operation on a parcel located along the mauka side of Nohea Street within the Kakela Makai Subdivision in Kalāheo, situated approximately 450 feet west of its intersection with Kakela Makai Drive and further identified as 1196 Nohea Street, Tax Map Key 2-3-023 parcel 119, and containing a total area of 10,017 square feet. The applicant is David and Melinda Murray.

Madam Chair, I do have two (2) individuals signed up to testify on this Agency Hearing. The Department would recommend opening the Agency Hearing at this time.

Chair Anderson: Is there anyone in the public that would like to give testimony on this agenda item?

Mr. Dahilig: Melinda Murray followed by Arlene Baker. Melinda Murray.

Melinda Murray: Good morning. I am Melinda Murray and my husband is David Murray. We are the applicants for the homestay located at 1196 Nohea Street. This is our first and only home. Most of my heart and life resides here on Kaua'i at over 30 years. My husband and I have three (3) children; all born in the same little room at KVMH. Thus, I know the difficulty of making ends meet and having two (2) jobs to do so. This homestay is our second job. I also know and have seen the changes throughout the years on this island; some of those changes are good and some of those are bad. We vow that if our homestay application is approved and there are any concerns or any problems, we will do what it takes to resolve them satisfactorily. Thank you for considering our application.

Chair Anderson: Thank you.

Mr. Dahilig: Arlene Baker.

Arlene Baker: This is going to be short and sweet. I'm Arlene Baker. I own the property next to the Murray's. I know that they are a quiet, happy family that lives next door. I approve of this homestay application. Sorry, I wrote things down. So yes, I do support it. I don't have much more to say, okay? Thank you.

Chair Anderson: Thank you.

Mr. Dahilig: Madam Chair, those are the only individuals I have signed up to testify on this agenda item.

Chair Anderson: Is there anyone else in the public that would like to give testimony at this time on this agenda item?

Seeing none.

Mr. Dahilig: Madam Chair, seeing none, the Department would recommend closing the Agency Hearing at this time.

Mr. Mahoney: Move to close, Madam Chair.

Mr. Abrams: Second.

Chair Anderson: Any discussion? (None) All those in favor? (Unanimous voice vote) Any opposed? (None) Motion carries 6:0.

Class IV Zoning Permit Z-IV-2015-40 and Use Permit U-2015-39 to allow conversion of an existing residence into a homestay operation on a parcel located along the mauka side of

Papalina Road within the Kai Ikena Subdivision in Kalāheo, situated approx. 9000 feet north of the Kai Ikena Street/Papalina Road intersection and further identified as 4330 Kai Ikena Street, Tax Map Key 2-3-020:092 and containing a total area of 8,011 sq. ft. = *Margarette Johannes*. APPLICATION WITHDRAWN BY APPLICANT.

Mr. Dahilig: Thank you, Madam Chair. Item F.2.c. This is Class IV Zoning Permit Z-IV-2015-40 and Use Permit U-2015-39. This application has actually been withdrawn by the Applicant. There is a communication for you, Madam Chair. It would be appropriate to receive this for the record to memorialize that withdrawal of the application.

Chair Anderson: Do I have a motion to receive the withdrawal of the application?

Mr. Abrams: Move to receive.

Mr. Keawe: Second.

Chair Anderson: Any discussion? (None) All those in favor? (Unanimous voice vote) Any opposed? (None) Motion carries 6:0.

Special Management Area Use Permit SMA(U)-2015-9 to construct an additional dwelling unit (ADU) on a parcel located along the mauka side of Kūhiō Highway in Wainiha, situated approx. 300 ft. mauka of the Ananalū Road/Kūhiō Highway intersection, further identified as 4541 Ananalū Road, Tax Map Key 5-8-006:065, and containing a total land area of 1.156 acres = *Chuck Linebaugh*. POSTPONED.

Mr. Dahilig: Thank you, Madam Chair. Item F.2.d. This is Special Management Area Use Permit SMA(U)-2015-9. This matter has been postponed due to the Applicant not being ready to proceed on this particular item. So this is just on here for 92 purposes.

Continued Public Hearing (NONE)

Mr. Dahilig: We do not have any Continued Public Hearing at this time.

New Public Hearing (NONE)

Mr. Dahilig: Neither any New Public Hearing for this morning.

I do have two (2) other individuals signed up to testify for Item I.3. This is the William Robertson and Lucinda McDonald matter. I believe these two (2) are the applicants, so they can elect to either testify at this moment or at the general business matter. But that's all I have signed up to testify this morning.

Chair Anderson: So we're proceeding with the agenda in order. If applicants would like, at this time, this is the public testimony portion, so you will have three (3) minutes as the general public has to give testimony. You also can have your time and will have the opportunity to speak on

your particular petition or application at the time the action is taken on your matter. So if there's any other public testimony for any agenda item, I would call for that now.

Mr. Dahilig: Seeing none, Madam Chair.

CONSENT CALENDAR

Status Reports

2015 Annual Status Report (7/10/15) from Milton Arakawa, Wilson Okamoto Corporation, for Special Management Area Use Permit SMA(U)-2005-8, Project Development Use Permit PDU-2005-26, U-2005-25 and Class IV Zoning Z-IV-2005-30, Tax Map Keys 3-5-001:027 (Por.), 168, 169, 171 (Por.), 175 and 176, Līhu'e, Kaua'i = *Kaua'i Lagoons LLC & MORI Golf (Kaua'i) LLC.*

Mr. Dahilig: If we can proceed on to Item G, Consent Calendar. We do have one (1) Status Report. This is a status report relating to the Kaua'i Lagoons development.

Director's Report(s) for Project(s) Scheduled for Agency Hearing on 8/25/15.

Class IV Zoning Permit Z-IV-2015-41, Use Permit U-2015-40 and Variance Permit V-2015-6 to allow installation and height variance for a 53 feet high stealth telecommunications structure and associated equipment on a parcel located in Līhu'e, situated at the Tip Top Motel/Café and Bakery site, further identified as 3173 Akahi Street, Tax Map Key 3-6-006:073, and affecting a parcel approx. 45,000 sq. ft. in size = *Verizon Wireless.*

Special Management Area Use Permit SMA(U)-2015-10, Class IV Zoning Permit Z-IV-2015-42, Use Permit U-2015-41 to allow conversion of an existing guest house into a bed and breakfast operation on a parcel located along the makai side of 'Aliomanu Road in Anahola, situated approx. ¾ mile makai of its intersection with Kūhiō Highway, further identified as 4760 'Aliomanu Road, Tax Map Key 4-8-013:007, and containing a total area of 11,481 sq. ft. = *Karen Hillstrom.*

Class IV Zoning Permit Z-IV-2015-43, Use Permit U-2015-42 and Special Permit SP-2015-15 to allow conversion of an existing guest house into a bed and breakfast operation on a parcel located along the mauka side of Kamalu Road within the Sleeping Giant Half Acres Subdivision in Wailua Homesteads, situated at the terminus of Uilani Place, further identified as 5900 Uilani Place, Tax Map Key 4-4-005:069, and containing a total area of 20,370 sq. ft. = *Steven R. Bauman/Tracy L. Bauman Trusts.*

Class IV Zoning Permit Z-IV-2015-44 and Use Permit U-2015-43 to allow conversion of an existing residence into a bed and breakfast operation on a parcel located along the makai side of Kolo Road in Kīlauea, situated approx. 500 ft. north of the Kolo Road/Hookui Road intersection, further identified as 4380 Hookui Road, Tax Map Key 5-2-011:030, and containing a total area of 0.35 acres = *Beryl Franklin McClerren, Jr./John Joseph Hunt, Jr.*

Class IV Zoning Permit Z-IV-2015-45 and Use Permit U-2015-44 to allow construction of a new administration building on a parcel located along the mauka side of Ahukini Road in Līhu'e, situated at the Līhu'e Heliport facility and approx. ¼ mile east of the Kapule Highway/Ahukini Road intersection, further identified as Tax Map Key 3-5-001:148, and affecting a portion of a larger parcel containing 3.67 acres = *Island Helicopters Kaua'i, Inc.*

Class IV Zoning Permit Z-IV-2015-46, Use Permit U-2015-45 and Special Permit SP-2015-16 to allow conversion of an existing residence into a bed and breakfast operation on a parcel located along the western side of Ōma'o Road within the Puu Pinao Subdivision in Ōma'o, situated approx. 150 ft. mauka of the Upa Road/Ōma'o Road intersection, further identified as 4175 Ōma'o Road, Tax Map Key 2-7-008:043, and containing a total area of 15,906 sq. ft. = *Sharon R. Boulay Trust.*

Mr. Dahilig: As well as items set for hearing under Item G.2. There are six (6) zoning permits for various items to set for hearing on August 25, 2015 at the next meeting.

The Department would recommend approving the Consent Calendar at this time.

Mr. Abrams: Move to approve the Consent Calendar.

Ms. Mendonca: Second.

Chair Anderson: Any discussion? (None) All those in favor? (Unanimous voice vote) Any opposed? (None) Motion carries 6:0.

EXECUTIVE SESSION (NONE)

Mr. Dahilig: Thank you, Madam Chair. We are now on Item H, Executive Sessions. We have none set for this morning.

GENERAL BUSINESS MATTERS

Request that the Commission act to reconsider Condition No. 12 as set forth in letter dated July 29, 2015 from Lorna Nishimitsu, Esq., for Class IV Zoning Permit Z-IV-2015-13, Use Permit U-2015-12, Special Permit SP-2015-3, Tax Map Key (4) 1-2-002: 008 = *Shredco, LLC.*

Mr. Dahilig: Item I, General Business Matters. Item I.1., request the Commission act to reconsider Condition No. 12 as set forth in letter dated July 29, 2015 from Lorna Nishimitsu, Esq., for Class IV Zoning Permit Z-IV-2015-13, Use Permit U-2015-12, and Special Permit SP-2015-3 at Tax Map Key (4) 1-2-002 parcel 8. The applicant was Shredco.

This was an application that was approved by the Commission at the last meeting. Madam Chair, the Department has circulated to the Commission the request from the Applicant's agent concerning this matter, as well as a memorandum from this Department. At this juncture, I

would recommend that the Commission seek counsel from the County Attorney's office as to the options regarding proceeding with a reconsideration request, so that the Commission is aware of the options that the Commission has.

Chair Anderson: Counsel, if you can set forth the reconsideration rules.

Deputy County Attorney Jodi Higuchi-Sayegusa: Under the Commission rules of practice and procedure 1-2-19, when a motion has been made and carried in the affirmative or negative, only a member who voted in the prevailing side may move, at the same meeting, or the very next meeting, to reconsider it, and such motion shall take precedence over all other questions.

So again, under the rules, if there is an interest to make the motion, only those voting in the affirmative of the prevailing motion may move. In addition, under Robert's Rules, there is a standard as to a valid motion to reconsider, and the purpose of reconsidering a vote is to permit correction of hasty, ill-advised, or erroneous action, or to take into account added information or a changed situation that has developed since the taking of the motion.

So really, it should be for one (1) of these purposes that I just stated.

Mr. Abrams: Can you say that again?

Ms. Higuchi-Sayegusa: Okay, I can repeat. So the purpose of the reconsidering of a vote is to permit correction of hasty, ill-advised, or erroneous action, or to take into account added information or a changed situation that has developed since the taking of the vote.

I think at the last meeting, you folks moved forward with the condition in question that was Condition No. 12. Since then, we've received correspondence from the Applicant raising some concerns with regard to that condition. I think for the purposes of clarity in the record, because at the previous meeting, the Applicant had no objections to all of the conditions that was the basis for proceeding and moving forward and approving that. I would suggest that it's something the Commission should consider that the Applicant is now submitting concerns. So for the clarity of the record, it might be something to hear out, but of course this is within your purview. And again, it's up to one (1) of the members who voted in the affirmative on the prevailing side of the motion to make such motion.

Chair Anderson: If you have questions for Counsel.

Mr. Abrams: Okay, so do we need to make that motion first? Before we hear input.

Ms. Higuchi-Sayegusa: The correct motion would be a motion to reconsider based on the correspondence from the Applicant, Condition No. 12.

Chair Anderson: So if there is any member of the Commission that would like to make that motion here. Otherwise, we have received it and...I believe we can receive the correspondence without acting on the motion. So it depends on if there is a Commissioner that was in attendance

and voted for the motion, if you would like to reconsider it, now would be the time to make that motion.

Ms. Mendonca: I would make a motion.

Chair Anderson: Okay, and is there a second?

Mr. Abrams: Second.

Chair Anderson: Okay. All those in favor? (5 ayes and 1 nay) We'll go ahead and do a roll call. I didn't hear everyone.

We have a motion to reconsider, we had a second, and we'll go ahead and go back and do a roll call on the vote.

Mr. Dahilig: Madam Chair, the roll call vote is on Item I.1., request the Commission act to reconsider Condition No. 12 as set forth in letter dated July 29, 2015 from Lorna Nishimitsu, Esq. An "aye" vote is to support the reconsideration.

Vice Chair Mahoney?

Mr. Mahoney: Aye.

Mr. Dahilig: Commissioner Katayama?

Mr. Katayama: Aye.

Mr. Dahilig: Commissioner Keawe?

Mr. Keawe: Aye.

Mr. Dahilig: Commissioner Abrams?

Mr. Abrams: Aye.

Mr. Dahilig: Commissioner Mendonca?

Ms. Mendonca: Aye.

Mr. Dahilig: Chair Anderson?

Chair Anderson: Nay.

Mr. Dahilig: 5:1, Madam Chair.

Chair Anderson: Okay, so we'll proceed with the reconsideration. Our counsel has set forth the rationale. We'll go ahead and call forth the Applicant.

Lorna Nishimitsu: Good Morning. For the record, Lorna Nishimitsu and accompanied by Danford Kaeo who is the member of Shredco, LLC, which received authorization to proceed with his materials recycling operation with the condition, which Counsel pointed out properly had not been objected to, but after sitting and thinking about the consequences and the logistics that would be involved in trying to adhere to this condition, a decision was made to ask this Commission to reconsider that particular condition.

Our letter of August 5th addressed to you said that there are other companies that process green waste at other County facilities, which currently has no limitations on separation of materials that might be derived from seed corn companies, because that seems to be the target of that condition; that language is specific in Condition No. 12, the seed corn companies. Or other companies that may produce product from genetically modified organisms and any compost or mulch that is produced by these operations, they have no similar restrictions on prohibiting the public from having access to those compost or green waste materials.

The second item is that all waste disposal, including the green waste processing and disposal, are strictly regulated by the State Department of Health. The Applicant is currently processing green waste materials from seed corn companies and there is no prohibition on Shredco from disposing of the resulting compost to the public, if Shredco elected to do so. Its operations strictly adhere to the rules and statutes as they relate to green waste materials and there is no legitimate basis existing under law for prohibiting it from making the materials available to any person who is willing to accept those materials. The prohibition places additional burdens on the Applicant for record-keeping. The greatest fear is that if there were to be a complaint that Shredco was making these seed corn company materials available to members of the public, or that it had commingled the material with what I would call ordinary green waste from all other sources. Its record-keeping procedures and its operations would have to be formulated such that the County, if it elected to proceed on a violation, would have the records about how you could be assured that the materials were not commingled, not made available to the general public, etc.

The Applicant is before you for authorization to use a twelve (12) acre parcel for materials, recycling, and processing. Twelve (12) acres sounds like a lot of land, but when you start getting into the actual operation of hauling green waste from the County sites, or hauling green waste from the seed corn companies, hauling bulky materials, hauling construction debris onto twelve (12) acres, breaking it down for the materials that are going to be composted, it's extremely difficult to keep everything confined to the twelve (12) acre site and not overlapping with each other. That was a real concern after he considered how am I going to implement such a condition?

Is it right to engage in free and fair commerce by restricting its operations as conditioned when there is no Federal or State prohibition on growing or producing GMO materials or organisms, and where the seed corn companies use of pesticide or herbicide are similarly in compliance with Federal and State regulations, is unreasonably constrained. He has no way of determining, for example because if pesticides and herbicides are the target, then properly Department of Health

should be regulating any green waste that goes to any of the County facilities or anywhere. He cannot determine when he takes green waste from the County facilities, whether they are hotel green waste or anybody's green waste, who has had those applications. He has no way of determining whether those materials contain any genetically modified organisms. And yet now the condition appears to be targeted at seed corn companies' green waste refuse. He's going to be unable to dispose of some of this green waste, which is contrary to the County's zero waste policy where it wants everything reused or broken down in size, so that we can extend the life of our landfill.

Finally, I think, and perhaps this horse has been beaten to death, the United States Federal District Court for the District of Hawai'i determined that the County's attempt through Ordinance 960 to regulate pesticide and herbicide application was preempted by State law and was invalid. Well, it's not apparent whether Condition No. 12 was imposed because of objections to GMOs or because of objections to pesticides or herbicides. We respectfully state that requiring differential treatment of green waste from seed corn companies and green waste from other sources in the absence of Federal or State authority is beyond the scope or authority of this Commission. Circling back to Robert's Rules, I think that the action in imposing that was erroneous; and therefore, is certainly worthy of you folks to reconsider and remove as a condition on Shredco's operations. Thank you.

Chair Anderson: Does the Commission have any questions for the Applicant?

Mr. Abrams: Lorna or Danford, I'm looking at the conditions. So the only particular condition that applies to the Health Department's supervision of the product that Danford puts out is contained in Condition No. 6?

Ms. Nishimitsu: That's correct. He also has to get a permit from the Department of Health. After he got this permit, he was cleared to go to the Department of Health for the necessary permits to designate that site as a site where he could process waste material.

Mr. Abrams: So that means it would be under further review and whatever review they would decide to do during the ongoing process.

Ms. Nishimitsu: That is my understanding, and Danford can correct me if I'm misunderstanding the steps he has to take after this planning process.

Mr. Abrams: Okay, thank you.

Chair Anderson: Any other questions?

I have a few questions. I understand from the motion that you felt that the original consent was acceptable, because we did go forward with the condition based on the Applicant agreeing to that condition. If you can describe, if there is further information, part of the original, and what I believe in my recollection from the original hearing, was (1) the Applicant had said that they do keep those materials separated, and so we were looking for clarification on whether or not those are provided to the public. So I'm just looking for that information, if it's something that is their

standard of use, that those materials are separated, and that you're opposing the condition because of potential record-keeping. If you can just clarify.

Ms. Nishimitsu: At this time, Shredco has a sublicense for a parcel or an area designated for Shredco's use on the ADC's lands, which is where the seed corn companies' materials are currently being processed because he has no other site. Up to this point, given the volume of material that he has been able to receive, he has been able to confine it to the site and reuse it on that site or throughout ADC lands. There is a possibility that the volume of materials might exceed the licensed area's ability to accept, which means the processing will have to be on this twelve (12) acre parcel that is the subject of this land use application before you, and then the record-keeping gets burdensome, okay. He might have to move the seed corn companies' green waste to his twelve (12) acre parcel that he owns, try to figure out how to keep the records, and instruct the employees to keep the materials separate. It's not clear what this condition was intended to accomplish when the materials, themselves, are not prohibited as a matter of law from existing. It's almost akin to saying that if I give a grocery store permits to build and operate, one (1) of the conditions is you cannot sell GMO products or you can only sell organic products. It could take it to that extreme and that's why it took both of us a while to realize what the ramifications were to his operations and once he starts going, how it's going to impair his ability to do what he wants to do. What he really wants to do is get the County jobs to help the community and get all of this green waste, all of the bulky materials, all of the construction debris processed as the County is looking to have it processed.

Chair Anderson: Just to clarify, again, that there is a subsequent Department of Health permit that you'll process. Are you aware if the Department of Health tests compost to determine whether it's suitable to be used for food purposes; for people to grow food?

Mr. Kaeo: Yes. The EPA requires that. If we're going to be using any type of manures that gets commingled with the carbon, which is basically the green waste, then you fall under EPA regulations to monitor those nitrates. So it's only for manure, and right now we are not introducing that due to the fact of the complexity of monitoring.

Chair Anderson: Just wanted to ask if you are aware of any restrictions that these particular companies have on their product, on their green waste? I believe the status quo is that it is being done on the ADC leased lands at this time. Are you aware of any restrictions that would prevent disposal of that green waste on other lands outside of the leased lands?

Mr. Kaeo: No, we don't know of any other restrictions from the Department of Health.

Chair Anderson: So these would be either government restrictions or private restrictions; restrictions from the ADC in terms of their lease agreement with the companies, if you are aware.

Ms. Nishimitsu: We are not aware.

Chair Anderson: Okay. More questions?

Mr. Abrams: I'm curious then, since you are receiving this green waste from someone who is already monitored, are you aware or did you ask them whether or not they had clearance relative to whatever government entity would be overseeing their operation to allow green waste to come to you? Or check on that?

Mr. Kaeo: No. Usually the green waste that we get, like I said, from the County is accepted by the County's operators themselves, so that source would probably be liability on the County. As far as us, we ask the customers where it's from, but other than that, there's no red flags for us.

Mr. Abrams: Okay. So when Syngenta brings in their green waste to you, at that point I suppose if they had a problem with whatever permits they received to run their operation of doing that, then that would have been a problem for them and they wouldn't have done it. I don't know.

Mr. Kaeo: Correct, correct.

Mr. Abrams: Would that be something that might be looked into when your permit is being processed as to this type of green waste that is coming into you and where it's coming from, in regards to some aspect of how they look at green waste and how it's processed?

Mr. Kaeo: Our understanding with our contract with the corn company is we don't monitor their operations. The green waste that we accept, and I've talked to Management about that, is totally acceptable, according to the DOH rules that they have to follow. The things that may be in question, we don't even handle; it gets buried, they handle it. We've been working with them and we have no problems with the transparency. We have brought that question up in the past where some of my employees have had questions and concerns, and we have gone through the whole process with the corn companies to prove that there is no health risk for what we are handling.

Mr. Abrams: Okay, thank you.

Chair Anderson: Are there any other questions from the Commission?

My final question, and this is just relative because it was brought up in the motion for reconsideration that there are other companies that are handling this green waste. I'm curious as to what companies are those. Is that through the County or how is that information there?

Mr. Kaeo: The question was there are two (2) other private companies that handle the processing of green waste material around the island, and they don't have any stipulations on them mandating them to segregate and not process or sell that product. One (1) of the reasons why we filed for reconsideration is if anything were to happen to the leased land on the ADC property that allows us, currently, to keep it separated, now it becomes more of a management nightmare for us to try to manage this on the twelve (12) acres in which this application is for.

Chair Anderson: Are you aware that those two (2) other companies are...do they have contracts with the seed companies?

Mr. Kaeo: I have no idea how they run their business; that's their business.

Chair Anderson: Okay. Alright, any other questions?

Mr. Dahilig: Madam Chair, if I can just, for the record, state for the Commission, so we are understanding the action that was taken. What was taken was a reconsideration of a vote to approve Class IV Zoning Permit Z-IV-2015-13, Use Permit U-2015-12, and Special Permit SP-2015-3 with the eleven (11) conditions as orally recommended by the Director that includes the time changes, and then with an amended motion to include the 12th condition related to the green waste. That is the motion that is on the floor that was moved by Commissioner Keawe and seconded by Commissioner Abrams, so that is the open motion that is on the floor right now; just for the Commissioners information.

So when you do a reconsideration it rolls back the final roll call, so that's the current motion that is on the floor right now. It's as if no roll call was taken at the last meeting, so that's the effect of the reconsideration, it is opening up that last motion for discussion. Just so everybody understands, that what is on the floor right now is the eleven (11) conditions with the amended condition as approved by the Commission 4:1, and that main motion was moved by Commissioner Keawe and seconded by Commissioner Abrams.

Chair Anderson: Okay, so we have a motion, we have a second. Discussion?

Ms. Mendonca: Discussion?

Chair Anderson: Yes.

Ms. Mendonca: Can we have a discussion right now?

Chair Anderson: Yes.

Ms. Mendonca: Thank you. Lorna, at the last meeting I got the feeling that your client was more than willing to separate, as best he could, with consideration. Based on your report you are saying that, in simplicity, the other two (2) companies have no restrictions and your concern is that we are putting this particular restriction on your client, which may be a management's nightmare down the road; you're looking in the terms of what may come up from it. Is that correct?

Ms. Nishimitsu: That is one (1) of the concerns. I think the other concern is, is it an equitable treatment of our client's application to process green waste and other materials? And thirdly, whether the Commission has the authority to impose a condition that would rightfully be imposed by, according to the United States District Court for the District of Hawai'i, one that State Department of Health actually has the authority to regulate. So it's a multiple of concerns.

I think in my letter to you requesting the reconsideration, I acknowledged that part of it was my fault. I did state for the record when asked if there were any objections, that GMO organisms are not prohibited by law to my knowledge. Secondly, that the seed corn companies use of

pesticides and herbicides is not prohibited by law. I stated that without specifically saying that I objected because it's ultimately the client's call.

When Mr. Kaeo said he didn't object, I believe it was a statement made for a variety of reasons. First, he thought he could manage it. Secondly, since May when we first came before you for the public hearing, he had been waiting for two (2) months trying to work out an agreement with ADC for use of the Mile Marker 28 farm road. And his project was put on hold for that two (2) month period before we could come before you, so part of it was the frustration with the process that you know, in a layman's eyes, everything takes so long. I might be speaking out of turn by trying to read his mind, but there was a compounding factor about why he said "I don't object". In hindsight, when he contacted me later, he did have major concerns about that condition and its implementation.

Ms. Mendonca: Thank you. I think, for our discussion for the Commission, I would have to say, based on her making the statement that she acted at the moment, I think we should also consider the fact that there are two (2) other companies, as stated, that have no restrictions. And putting it on Shredco who has been here, going through this, willing to work with us, pretty much being a local-run company, I would like the Commissioners to give it a little bit more of a serious thought that we may have acted without giving him a fair judgement or equality in consideration that he has been here answering all the questions. If this is a concern, I can appreciate the feeling of why are the other two (2) not having these stipulations? Where he has gone through hoops trying to satisfy all of our concerns, so that's my discussion.

Chair Anderson: Further discussion?

Mr. Katayama: I think one (1) other issue that we need to consider is that these conditions run with the land; it does not run with Shredco. Other permits that Shredco would apply for related to the operations, I think is totally separate than the land use. Again, I think what we need to do is consider the nexus of Condition No. 12 relative to a land use view; not just an operation of Shredco. I think as we move forward in reviewing these applications, that is one (1) of the underpinnings that we always need to keep in mind is, what conditions are we imposing on the land? It's not the operation. In this case, it's a Use Permit that we are saying what are the conditions that we will allow on this twelve (12) acre parcel? Again, for a lot of the information that's brought forward, I think that should also be a consideration for the reconsideration of that condition. Thank you.

Chair Anderson: Other comments, discussion?

Mr. Abrams: I understand that, and I do, too. I just was, at that point, looking at it from the two (2) issues that I heard from Angela, which was pesticides and GMO. And at that point, whether or not that should be put in the domain, and that really sort of got into whether or not we really had the wherewithal, or the knowledge, to make a decision like that. I had previously thought that the Health Department would be considering all of those things in the permit, and not understanding the GMO aspect of it that there certainly is plenty of review on that thing. I thought once you had agreed to that then we just sort of tabled all of that discussion that may have come up had we still been there because it seemed to me it might've gone on for a while

and that may be part of your motivation to just simply, if you can live with it, you can live with it. Now I've come to realize that maybe that isn't there. I am satisfied after reading the Hawai'i Crop Improvement Association's letter in regards to that and the condition that is there. At least I feel comfortable with the fact that you can go ahead and that decision will be made if, in fact, it is a concern to those Departments. With that, I would go ahead and continue to support the reconsideration of that motion and remove it from the list of conditions there, and just go with the first eleven (11).

Chair Anderson: My comments, and originally when I brought up that condition, is precisely because there is a lot of information that we don't have before us. I do believe that it is our duty to protect the public trust, to protect our ground water, and to make sure that the public is aware of the possible pesticides or contamination in property they receive. So there was a concern for me when I heard that there were these materials that were being produced and then provided to the public for free, and that people might be motivated to get it because of their economic situation; therefore, it may have implications on their property. The fact that information is unclear, it's an unknown, there are questions. I understand that GMO is not...just because something is a genetically modified organism that's not really my specialty and I don't have a blanket opposition to the GMO in itself, but it's the fact that these companies are performing research and that they may be outside of the scope of certain requirements for things that are produced for food, and that ultimately, these research materials may end up on the farms of people here on Kaua'i, may end up in the Farmer's Markets. The public just has a right to know what's going on. If these materials are basically, I think the word was, commingled, there would be no way to trace where these particular toxins came from. There would be no way in the future to say, oh this chemical that was used for this genetic research on this farm, if you were to look at the soil 20 years from now and this compost is being spread around the island, there's no way to trace who is responsible for that cleanup. Those are the concerns that I bring to it. Yes, as a Planning Commissioner, a volunteer, I can say, I don't have that jurisdiction, but I believe that the DOH (1) has a responsibility to look at the green waste, not just the commingling of manure. I think that it's very important with the changes in agriculture and the uses of pesticides, it may not be used in the conventional way, so those are my concerns that I bring. It's not that I want to single out Shredco in any way. I believe that you are approaching this in a very pono manner and I appreciate your honesty and your sincerity. I just want to make sure that when we make decisions that we do it, not out of pressure that it's been done or there are other people doing it, so we continue to push along. If restrictions aren't there that need to be there, we need to shine a light on it and there needs to be attention brought to it. That's the reason I brought up that matter. Yes, it was a last minute condition to put on there, but it was an attempt to try to protect until we had more information. That's my two cents on the matter.

With that, is there any other discussion?

Ms. Higuchi-Sayegusa: Okay, just to clarify. I'm sorry.

Mr. Keawe: No, no, so if we wanted to change that condition or eliminate the condition, what's the process to do that?

Ms. Higuchi-Sayegusa: I think, at this point, we would need to amend the prior motion to remove Condition No. 12. Alternatively, either Commissioner Abrams or Commissioner Keawe can withdraw your previous motion from last time with regard to amending and entertaining Condition No. 12.

Mr. Keawe: I move to withdraw the previous condition.

Mr. Abrams: I agree to withdraw my second.

Mr. Dahilig: Given that Madam Chair, we need a new motion on the floor to act on the application at this point.

Mr. Abrams: And/or another amendment?

Mr. Dahilig: No, because you guys were the main motion withdrawals.

Ms. Higuchi-Sayegusa: So you've withdrawn the amendment that added Condition No. 12, and so now we have to act on the main permit (sic).

Mr. Abrams: We have to act on the main motion?

Ms. Higuchi-Sayegusa: Yes.

Mr. Abrams: Do we do amendments before the main motion? If we do, I just want to make sure I'm clear.

Mr. Dahilig: Given the ruling of the Attorney, she's interpreting the withdrawal as a withdrawal of the amendment to the motion. The recommendation that was moved on initially was the oral recommendation from the Department that includes the eleven (11) conditions, as well as the time change. So that now stands as, I interpret, the motion on the floor.

Chair Anderson: Just to make clear, can you state the motion one (1) more time?

Mr. Dahilig: So the motion on the floor is to approve Class IV Zoning Permit Z-IV-2015-13, Use Permit U-2015-12, and Special Permit SP-2015-3 as orally recommended by the Department.

Chair Anderson: Okay, any further discussion?

Let's go and do a roll call vote.

Mr. Dahilig: Again, Madam Chair, the motion on the floor is to approve Class IV Zoning Permit Z-IV-2015-13, Use Permit U-2015-12, and Special Permit SP-2015-3 as orally recommended by the Department.

Vice Chair Mahoney?

Mr. Mahoney: Aye.

Mr. Dahilig: Commissioner Katayama?

Mr. Katayama: Aye.

Mr. Dahilig: Commissioner Keawe?

Mr. Keawe: Aye.

Mr. Dahilig: Commissioner Abrams?

Mr. Abrams: Aye.

Mr. Dahilig: Commissioner Mendonca?

Ms. Mendonca: Aye.

Mr. Dahilig: Chair Anderson?

Chair Anderson: Nay.

Mr. Dahilig: 5:1, Madam Chair.

Chair Anderson: Thank you.

Ms. Nishimitsu: Thank you for your time.

Moa Lemu, LLC's Petition for Intervention by Daniel G. Hempey and Gregory H. Meyers, Attorneys for Moa Lemu, LLC, relating to *Dolphin House Estates, LLC's* Petition for a Declaratory Order Concerning the Operation of a Transient Vacation Rental Without a Non-Conforming Use Certificate.

Mr. Dahilig: Thank you, Madam Chair. We are now on Item I.2. This is Moa Lemu, LLC's petition for intervention by Daniel G. Hempey and Gregory H. Meyers, Attorneys for Moa Lemu, LLC, relating to Dolphin House Estates, LLC's petition for a Declaratory Order concerning the operation of a Transient Vacation Rental without a Non-Conforming Use Certificate.

Madam Chair, I believe this has been circulated to the Commission. This is also in response to Dolphin House Estates, LLC's request for a Declaratory Order. As you may recall, the Commission ordered a return on the matter, as to provide an opportunity for intervention at this meeting. This has been received by the Department and is actionable. Given that Moa Lemu, LLC is the actual landowner that Dolphin House Estates, LLC's asking for declaratory action against, the Department sees that there is a unique interest in the proceeding and would

recommend that the Commission approve the petition for intervention in this matter and refer the matter to a Hearings Officer for its recommendation to the Commission for action.

I believe representatives for both the Applicant, as well as the Petitioner for the Declaratory Order are present.

Chair Anderson: If we can have the requested Intervener, as well as the Applicant step forward.

Gregory Meyers: Good Morning Commissioners. Gregory Meyers on behalf of the Intervener, Moa Lemu, LLC.

Mateo Cabbalero: Mateo Cabbalero on behalf of Petitioner, Dolphin House Estates, LLC.

Mr. Dahilig: Madam Chair, again just appearance for the record on behalf of the Department, the Department would state its non-objection to the Intervener's request.

Chair Anderson: Does the Commission have any questions for the requesting Intervener or the Applicant at this time?

Does the Petitioner have any objections to the proposed intervention?

Mr. Cabbalero: No objections.

Chair Anderson: Okay. So if there are no questions, I believe we have a motion to receive the request for intervention.

Mr. Dahilig: The recommended action, on behalf of the Department, would be that the Commission approve the petition for intervention and schedule the matter for a hearing before a Hearings Officer to provide a recommended Conclusions of Law, Findings of Fact, and Decision and Order to the Commission for its actions once the Contested Case Hearing has been concluded.

Chair Anderson: Do I have a motion?

Mr. Keawe: So moved.

Chair Anderson: Second?

Mr. Katayama: Second.

Chair Anderson: Okay. All those in favor? (Unanimous voice vote) Any opposed? (None) Motion carries 6:0. Thank you.

Mr. Dahilig: Just for the Parties' information, the matter will be rolled over to the Hearings Officer. You should hear from the Hearings Officer within thirty (30) days concerning scheduling for the Contested Case Hearing.

Time Extension request regarding Class IV Zoning Permit Z-IV-2011-12, Use Permit U-2011-12 and Special Permit SP-2011-7 for operation of commercial tours and gift shop at the botanical gardens, Tax Map Key 5-3-008:012, Princeville, Kaua'i = William E. Robertson & Lucinda McDonald Trust.

Mr. Dahilig: Madam Chair, we are now on Item I.3. This is a time extension request regarding Class IV Zoning Permit Z-IV-2011-12, Use Permit U-2011-12, and Special Permit SP-2011-7 for operation of commercial tours and gift shop at the botanical gardens. Tax Map Key 5-3-008 parcel 12. This is in Princeville. The applicants are William E. Robertson and Lucinda McDonald Trust.

Madam Chair, just for your information, the applicants have also signed up for testimony on this particular item, but they also are parties for this matter. Dale is our Planner and can present the recommendation on behalf of the Department.

Chair Anderson: Okay, so we'll hear from the Planner first, then I'll call the Applicant.

Staff Planner Dale Cua: Good morning, Madam Chair and members of the Commission. At this time, I'll go ahead and read the report. I'll give you a little bit of background on the permits in itself.

Mr. Cua read the Director's Report for the record (on file with the Planning Department).

And that is the Department's recommendation and report.

Chair Anderson: Thank you.

If I can have the Applicant please approach.

William Robertson: Good morning, Commissioners. My name is William Robertson. I am one (1) of the owners of Princeville Botanical Gardens along with my wife, Lucinda Robertson. We've been operating the Botanical Gardens for four (4) years and we've had no complaints. A lot of happy people have come through our garden. We abide by the rules of our Use Permit very strictly and have never had any complaints by any of our neighbors. When we first applied, I think four (4) years ago, there were some concerns with our neighbors. At this point, we are on extremely good terms with all of our neighbors.

What we're asking for is, basically everything being the same, we are not asking for any extensions of a number of tours or anything like that, but what we're asking, rather than coming back every two (2) years, maybe we can go a little bit longer; maybe four (4) to six (6) years. It is a temporary permit, so if anything was done out of place or against our Use Permit, the permit could be pulled immediately. We are just requesting if we can go for a few more years before we go before the Board (sic) like this.

Lucinda Robertson: I'm Lucinda Robertson and I just wanted to thank you for listening to my husband. And just to report that all is going well. It's just a joy to see the people when they go

through the garden and you can tell by those Trip Advisor reviews that it makes people happy, so that's what motivates us to continue with it. So, thank you.

Chair Anderson: Are you agreeable to the recommendations set forth in the Director's Report regarding the amendment to No. 10?

Ms. Robertson: He's recommending just two (2) years still.

Mr. Robertson: Yes, he's recommending two (2) years. We are actually asking if we can get like four (4) to six (6) years extension on the two (2) years, so we don't have to come back every two (2) years.

Ms. Robertson: I think the reason for continuing just with the two (2) years was the initial response to a couple of the neighbors. Like we said, there's no complaints and they're happy. So we don't have to use your time in two (2) years, we just thought maybe we could go a little bit longer.

Mr. Robertson: It actually says in No. 10, additional extensions may be granted for longer periods of time by the Planning Commission provided adverse impacts are not generated that affect the public health, safety, and welfare, as well as the surrounding environment, and conditions of approval are complied with; which we feel this is the case.

Chair Anderson: Okay. Any questions for the Applicant?

Mr. Keawe: Madam Chair, I have something.

Chair Anderson: Yes.

Mr. Keawe: Dale, what was your rationale for going two (2) years, instead of four (4)? Did they ask you for a longer term?

Mr. Cua: Yes. I think, as noted in the Director's Report, the initial request from the Applicant was for a period of ten (10) years. The Department's position was just to assure or reassure that there are no impacts to the neighborhood. We wanted to make sure that we could revisit the permit application every other year, so two (2) years, just to make sure everything is okay.

Mr. Keawe: And then at what point would you feel that...they've done it for four (4) years now, is that correct?

Mr. Cua: Right. At this point, it would be at the Commission's liberty to make that discretionary call, as far as if you folks want to grant a longer period of time.

Mr. Keawe: Okay. Where do you get most of your guests from? The people that come through your garden.

Ms. Robertson: They come to the airport and they see flyers. It's a lot of visitors and then sometimes we've had schools come through, local schools. But I would say it's probably mostly visitors to the island.

Mr. Keawe: Mostly visitors. And that's based on your marketing pieces that you have out there? Or how do they find out about you?

Mr. Robertson: We work with a lot of the hotels, like the Marriott and the Westin Hotel. Basically, if you go on the internet, people who come to Kaua'i might say, well we are going to the Garden Island, let's visit some gardens, so they find us on the internet; a lot is done like that. Word of mouth, Trip Advisor; we handed out some of the responses from Trip Advisor. Probably the majority of our...if people want to find out about our garden, they'll go to someplace like Trip Advisor and read the reports.

Mr. Keawe: Okay. And your current fee structure for your tour, are there levels? Or it's just all one (1) price?

Ms. Robertson: It's just one (1) tour, and then we give a Kama'āina discount.

Mr. Keawe: Okay. What's the current rate now?

Mr. Robertson: \$55, and children, I think, are either \$15 or \$17 over 12-17. Under an age, maybe 7 or 8, they do not pay anything.

Mr. Keawe: Right. And the tour lasts how long?

Ms. Robertson: Three (3) hours.

Mr. Keawe: Three (3) hours.

Chair Anderson: Any other questions for the Applicants?

Mr. Katayama: I have a question for the Planner.

Chair Anderson: Okay.

Mr. Katayama: Dale, as these permits come before the Commission, are there any capacity issues? Assuming that as the gardens do well, it's signifying more attendees, more tours. So things like parking capacity, street capacity, have we looked at that and is that an issue?

Mr. Cua: Those specific concerns were addressed at the time the application...

Mr. Katayama: Well as we move forward and as the operations grow, does the gardens have the... What level of capacity are they at currently? I think that should sort of determine the frequency of revisiting the permit. I mean if they are like 50% and we can do that every five (5) years or ten (10) years, I'll be okay. But how are those capacity issues being reviewed?

Mr. Cua: At this point, I would say that based on the project site, there is ample space to accommodate more visitors. At the same time, when we evaluated the project, there was a restriction to the number of tours that can occur per week. I think it was just a balance as far as being able to accommodate the Applicant's request and at the same time, being able to be sensitive to the neighborhood and mitigate the concerns that was presented to the Commission at the time the application was being presented.

Mr. Dahilig: Just to add to that, and just for the Commissioners' reference, it's on Page 340 of 373 of the PDF, so you can see the actual tour condition.

As you know, our Department enforces conditions based off of complaints. At this juncture, we haven't received any complaints concerning the Applicant's activities, given the standards of operation as provided. However, it is a sensitive area and as far as we would like, is to be able to continue monitoring of the area on a closer periodic basis, notwithstanding the fact that there hasn't been any complaints. I think your question, Commissioner Katayama, is relevant though. We do our basis based off of complaint history, but we haven't actually asked affirmatively for attendance records or those types of things to verify the question that you have posed.

Mr. Katayama: Well, I think we're trying to strike a balance between helping the Applicant, as well as maintaining the Commission's fiduciary responsibility to the community, so I'm trying to get a sense of that.

Mr. Dahilig: On that note, the Department would not be opposed to a deferral of the matter if the Applicants are able to provide information to the Commission concerning the actual attendance records, and whether or not it has reached the capacity or not.

Mr. Robertson: I can make a few comments. I think I did the math before, and if we are allowed eight (8) tours a week, twenty (20) people per tour, and you do it on a monthly basis, that's over 600 tourists coming through a month. We're getting anywhere from 250 to under 400 a month. In fact, this last month was pretty low. I'd love it if we can just get about 400, which is about less than two-thirds of what we've been approved for. So we are not getting anywhere close to our maximum that we've been allowed, which is fine. Our tour says four (4) days we can do; sometimes we do four (4) days, most of the time we do three (3) days. We're not in this to make a lot of money or to pack the place.

Chair Anderson: Any other questions for the Planner or the Applicant?

Mr. Abrams: Yes. Applicant. I'm reading the evaluation there where the rationale was that at the very first hearing, there was some opposition to the application and they weren't sure how the impacts would be, and that is why you put the timeframe on. And they wanted to preserve that opportunity to revisit it. I'm not sure whether you are familiar with those people who would be, I guess, neighbors. If I had heard that those were things that they are now satisfied with, then I might be inclined to go a little bit more than the two (2) years, but at this point right now, I haven't heard it. I know there are no problems from what we can tell in terms of complaints, but to some of those neighbors, perhaps verification of that would be a good thing to do; at least for

Planning in terms of a longer period of time. That's kind of what I am looking at in regards to that rationale that Dale and the Department have put on, in regards to keeping it at two (2) years.

Ms. Robertson: Can I ask a question?

Chair Anderson: Yes.

Ms. Robertson: So you would like a written statement from those neighbors that were opposed at the beginning? Is that what you're asking?

Mr. Abrams: It said in the beginning that there was opposition, and the two (2) year condition renewal; now that you've gone through one (1), this is the second one. So at that point, they are still of the opinion that they want to keep it at two (2) years because they are not sure. I realize things change or happen, but part of that, and that may be a decision we make in regards to going longer or not, but their rationale was the fact that to revisit in two (2) years, if something came up because it was overlooked or we didn't hear anything about it, is easier to deal with than wait for four (4) years or six (6) years or ten (10) years at that point, because other than that, that's part of that process we'd have to go through if something else turned out that you were exceeding some of those things. I just wanted to see whether or not you were familiar with those opposition letters in regards to that, and whether or not you've had a chance to get their feedback.

Ms. Robertson: Well, I mean, it's a nice community and everybody walks every day. We talk to them every day. They have not complained to us directly, and they give us fish when they go fishing. So it seems like everything is fine.

Mr. Abrams: It appears to be, yes.

Mr. Robertson: We've asked people if there's anything we can do, and several of the people said, oh we don't even know what you're doing; it's like non-existence to us. It's like the impact was not what we thought it was going to be. You know, we always comp their friends when they come into town.

Mr. Abrams: No, I understand all of that. I'm just simply saying I'm looking at this rationale. If that wasn't there, then I may be thinking of a longer period of time. But I'm looking at how the Department works and how they like to handle things, and my perception is that at one point in time when they were satisfied with everything, and they're still not quite at that point to recommend two (2) years, then they may recommend something longer. I generally don't want to argue with our Department in regards to something that they may have a policy that they handle, but maybe the Commission wants to do something different; I don't know.

Chair Anderson: Any other questions to the Planner or the Applicant?

So do we have a motion?